

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9519 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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M/S KRISHNONICS LTD

Versus

UNION OF INDIA  
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Appearance:

MR PARESH M DAVE for Petitioners  
MR MUKESH R SHAH for Respondents  
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CORAM : MR.JUSTICE J.N.BHATT and  
MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/12/1999

ORAL JUDGEMENT (Per J.N.Bhatt, J.)

Rule, service of which is waived by learned Addl. Central  
Government counsel Mr M.R.Shah for the respondents.

The only question which requires adjudication in this  
petition is as to whether the directions contained in the  
impugned order dated, 11.11.99, while considering the

stay application about the pre-deposit exercising powers under section 35-F of the Central Excise and Salt Act, 1944 (Act) are just and reasonable or not. In other words, whether the Commissioner, respondent No.2, while passing the impugned order was justified in directing an amount of Rs.3,50,000/- by way of pre-deposit under section 35-F of the Act is sustainable or not. After having heard the learned advocates appearing for the parties and considering the first proviso to Rule 49 of the Central Excise Rules and the special circumstances obtainable in the present case, in our opinion, the direction of pre-deposit contained in the impugned order is required to be interfered with in exercise of our powers under Article 226 of the Constitution of India.

In the result, the impugned order is quashed and set aside and the respondent No.2, Commissioner, is directed to decide the appeal (which is pending) on merits, without insisting upon the pre-deposit, in the peculiar facts and circumstances of the case. Accordingly, this petition is allowed. The respondent No.2, shall, expeditiously hear the appeal. As a necessary corollary, the question of recovery pursuant to the adjudication would not arise at all, until the appeal is decided. Rule is made absolute accordingly with no order as to costs.

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